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Art Unit 3728
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From: Paul L. Brown, Esq.
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Comments: Re: USSN 10/010,123
Filing Date: December 6, 2001
Art Unit: 3728
Applicant: Anthony Jones
THERAPEUTIC SHOE

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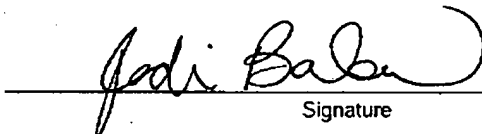
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RE: USSN 10/010,123
Examiner: Anthony D. Stashick
Art Unit: 3728
Inventor: Anthony Jones

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	
)	Group Art Unit: 3728
Anthony Jones)	
)	Examiner: Anthony D. Stashick
Serial No.: 10/010,123)	
)	
Filed: December 6, 2001)	
)	
Title: THERAPEUTIC SHOE)	
)	
Attorney's Docket No.: 1)	

Mail Stop: NON FEE AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT

Sir:

In response to the Office Action dated June 30, 2003, please amend the above-identified application as indicated below.

INTRODUCTORY COMMENTS

Applicant has canceled claim 5 and has amended claims 1-4, 6-12 and 14-16 to improve the form of the claims and to clearly distinguish the claimed invention from the Examiner's prior art citations. It is respectfully submitted that claims 1-16, as now presented, are clearly in condition for allowance.

Applicant has amended independent claims 1 and 9 to particularly point out that the present invention relates to a shoe for applying a therapeutic solution and treatment for a

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user's foot. The shoe includes a waterproof flexible shoe member having a side wall portion and a sole portion with the shoe member being structurally arranged to receive and enclose the user's foot therein surrounded by the therapeutic solution. The sole portion has an inner upper surface engageable with the user's foot and an outer lower surface engageable with the supporting structure. The inner upper surface of the sole portion has flexible texturizing members thereon which engage the foot to facilitate the medical effectiveness of the therapeutic treatment of the foot during movement of the foot within the shoe. The sidewall portion of the shoe has an upper end portion having sealing means which secure the shoe to the leg or ankle to prevent escape of the therapeutic solution from the shoe.

Claim 9 is similar to claim 1 but wherein the inner waterproof flexible shoe member includes an outer covering member positioned about the inner waterproof flexible shoe member to permit movement of the shoe during treatments and to protect the inner shoe member during the therapeutic treatment of the user's foot. It is respectfully submitted that such a unique and novel therapeutic shoe is simply not taught or suggested by the Examiner's cited references.

The Examiner has rejected independent claims 1 and 9 as well as dependent claims 3-4, 8, 11-13 and 16 as being unpatentable over Marcellus, U.S. Patent 1,257,086, in view of Giannetti, U.S. Patent 4,215,491. The Examiner contends that Marcellus discloses all the limitations of the claimed invention, except it does not teach the use of texturizing members on the upper surface of the sole for massaging the feet. However, Marcellus relates only to a hot water boot wherein water casing 6 envelops a foot casing 1 to provide a water compartment. Thus, there is no contact between the user's foot and the hot water contained within the water

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compartment. It is respectfully requested that the Examiner reconsider his interpretation of the Giannetti '491 reference in combination with Marcellus for each of the following reasons.

The Giannetti '491 patent relates to a shower boot worn by a person taking a shower for soaping, scrubbing and washing the feet of the user/wearer. Specifically, Giannetti discloses a boot having a leg enclosing portion 42 which is flared outwardly to permit water to enter and exit the boot during showering. With such a construction, the water falling downward or running downwardly along the surface of the leg will enter the boot to replace the cleansing composition that is engageable with the foot. Thus, a fair reading of Giannetti would be a structure that includes inwardly projecting knobs, prongs, or nipples to facilitate washing and scrubbing of the areas of the foot for use with a structure which permits the continuous flow of washing compound into and out of the boot during showering. Plainly, such a structure does not disclose the unique and novel shoe for applying a therapeutic solution for bacterial inflammations of a user's foot, as specifically recited in Applicant's claims 1 and 9. Thus, it is respectfully submitted that claims 1 and 9 are allowable over Marcellus and Giannetti.

The Examiner has further rejected claims 1 and 3-7 as being unpatentable over Palmer, U.S. Patent 4,622,035, in view of Giannetti. The Examiner contends that Palmer discloses all the limitations of claim 1, except it does not teach the use of texturizing members on the upper surface of the sole member for massaging the foot. Again, the Examiner contends that such a structure is taught by the Giannetti '491 patent. It is respectfully requested that the Examiner reconsider his interpretation of the Palmer reference for each of the following reasons.

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Palmer discloses a boot for the continuous medicament supply to the inner portion of the boot. The boot includes a reservoir 16 which is supplied by tube 17 of the medication. Palmer's boot does not include any texturizing members and, accordingly, the Palmer boot works solely upon the absorption of the medication onto the foot of the wearer. There is simply no teaching for the combination of Palmer with Giannetti, as the Examiner asserts. The only common feature between Palmer and Giannetti is that the two types of boot structures continuously supply a liquid into the boot for engagement with the user's foot. Specifically, Palmer teaches a shoe which includes a reservoir of medication which is fed by strips to the inner surface of the shoe. Indeed, Palmer states in column 2, lines 31-34 that an object of his invention is to provide a liquid-tight boot which has a self-contained supply of medicament for treating the foot and that this supply of medicament can be replenished, as required. Furthermore, Palmer states in column 2, lines 42-46, that his liquid-tight boot has an absorbent lining which is continuously supplied with the therapeutic or cosmetic lotion by the network of fingers. Plainly, neither of these references, when combined together, remotely disclose flexible texturizing members on the inner upper surface of the sole portion which engages the user's foot to facilitate the medical effectiveness of the therapeutic treatment of the foot of the user. It is respectfully submitted that claims 1 and 3-7 are allowable over Palmer in view of Giannetti.

Claims 1, 3-5 and 8 have been rejected as unpatentable over Basa, U.S. Patent 3,749,091 in view of Giannetti '491. The Examiner contends that Basa discloses all of the limitations of the claims except the use of texturizing members on the inner surface of the sole

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for massaging the user's foot. It is respectfully requested that the Examiner reconsider his interpretation of the Basa patent.

For example, Basa relates to a therapeutic boot containing pads 27 and 29 which are sponge-like for application of medication to the toes and foot to treat athlete's foot. These pads are positioned within the boot and are replaceable, as desired. The Basa boot includes a liquid inlet tube 33 which is associated with an external inlet point 35 and a cover 38 for depositing the liquid medication within the boot. Basa's boot includes a sole piece 3, an upper portion 5 and an ankle portion 9 adjoining the upper portion 5. The sole piece 3 must be relatively impervious to the liquid. The upper portion 5 engages the ankle portion 9 and has a tubular passageway 11 which extends completely about the boot and includes a drawstring pass through the passageway 11. The function of the passageway and drawstrings to provide at least a "partial seal" between liquid in the lower portion of the boot against upward movement and resultant leakage. The ankle portion 9 comprises a flexible liquid absorbent material, such as a canvas and similar porous fabrics. The use of an absorbent material is required because it is necessary to absorb the liquid escaping from the seal provided by the tubular passageway 11. The ankle portion is also preferably provided with a corrugated vertical ribbing 23 and a garter piece 25 which provides additional safeguards in retaining fluids leaking from the boot. Thus, as disclosed in the abstract, the drawstring and sealing member compress the upper portion 9 against the angle to "partially seal" the boot about the foot of the wearer. Thus, when Basa's structure is combined with Giannetti, only a partial seal is provided or achieved. For example, Giannetti does not teach the use of any type of sealing means upon the upper end of his boot

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structure. Instead, Giannetti teaches a flared leg enclosing portion 22 which continuously permits water falling downwardly to enter and exit the boot to effectively wash the feet of the user and excess water to leave the boot. Simply, it is not seen how any combination of Basa with Giannetti provides a sealing means which secures the shoe to the ankle or leg and prevents escape of the solution from the shoe during therapeutic treatment. Thus, it is respectfully submitted that claims 1, 3-4 and 8 are allowable over Basa in view of Giannetti.

Claims 2 and 10 have been rejected over any and all of the references applied to claim 1 in view of Kim, U.S. Patent 5,896,680. The Examiner argues that the '680 patent teaches that massaging or scrubbing members attached to the sole can be made of fibers. However, it is respectfully requested that the Examiner reconsider the Kim reference because Kim relates solely to a sole construction which acts as a "cushioning material" for the foot. For example, column 5, lines 12-15, teaches that the size, height, shapes and spacings of the pattern of projections "affect the cushioning properties" of the three dimensional networks. Further references in column 6, lines 35-26 and 54-55 indicate that the fiber networks and the fabric construction provide the desired "cushioning" products and impact absorbing properties. This is underscored in column 6, line 64 through column 7, line 3, wherein the flat areas of the projections may be positioned facing each other to provide thicker spacers and "cushions" for the foot. Thus, the Kim reference is solely related to a three dimensional cushioning product for a foot, and there is simply no teaching or suggestion that such a construction could be utilized in a shoe for applying a therapeutic solution or treatment to a user's foot. Accordingly, for each and all of the reasons

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given above with respect to claim 1; it is respectfully submitted that claims 2 and 10 are in condition for allowance.

Claims 14 and 15 have been rejected over the references applied to claim 13, in paragraph 2, in view of Palmer. Suffice to say, there is no teaching in any of the references of a shoe for providing the therapeutic treatment having sealing means about the upper side wall portion to include sealing means which secure the shoe to the ankle or leg of the user to prevent escape of the therapeutic solution from the shoe. For each and all of the reasons given above with respect to the patentability of claim 1 and the Marcellus and Basa references and their lack of teaching of the sealing means which prevents entrance into and escape of therapeutic solution from the shoe, it is respectfully submitted that claim 13 is in condition for allowance.

Applicant has reviewed the Potter U.S. Patent 2,400,023 and Aragonna U.S. Patent 5,473,788, but can find no teaching of the claimed invention.

It is respectfully submitted that claims 1- 4 and 6-16 as now presented are in condition for early allowance.

Respectfully submitted,

ANTHONY JONES

Date: Sept. 30, 2003

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